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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,016	03/06/2001	Jeffrey A. Livesay	Wellogix-002:CIP	1305
21897	7590	06/23/2010	EXAMINER	
THE MATTHEWS FIRM 2000 BERING DRIVE SUITE 700 HOUSTON, TX 77057			COLBERT, ELLA	
			ART UNIT	PAPER NUMBER
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			06/23/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/801,016	Applicant(s) LIVESAY ET AL.	
	Examiner Ella Colbert	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 131-140 is/are pending in the application.
- 4a) Of the above claim(s) 141-145 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 131-140 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-4 and 131-145 are pending. Group I, claims 1-4 and 131-140 were elected without traverse and claims 141-145 were withdrawn in this communication filed 3/18/10 entered as Response to Election/Restriction.

Applicants' election without traverse of Group I, claims 1-4 and 131-140 in the response filed 3/18/10 is acknowledged.

Claims 141-145 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. There being no allowable generic or linking claim. Election was made without traverse in the reply filed on 3/18/10. Claims 1-4 and 141-145 will be examined on the merits as set forth here below.

Drawings

The drawings are objected to because Drawing Figure 16D has 1632a in the drawing figure where it is difficult to read the element (1632a). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

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sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1, 131-134, and 137 are objected to because of the following informalities: Claim 1 recites "obtaining and storing in at least one medium that is electronically ... wherein the estimated data comprises an initial estimate of the at least one good, at least one service, or combinations thereof ...; receiving and storing in at least one medium that is electronically ..., wherein the actual performance data ... one good, at least one service, or combinations thereof ... of the at least a portion of the complex project; ...; sending an electronic notification ... to at least one of the buyer and the seller; receiving a proposed ... at least one of the buyer or the seller; receiving a proposed ... at least from the other of the buyer or the seller." These claim limitations would be better recited for clarity purposes as "obtaining and storing in at least one medium electronically ... wherein the estimated data comprises an initial estimate of the at least one good, the at least one service, or combinations thereof ...; receiving and storing in at least one medium electronically ..., wherein the actual performance data ... the at least one good, the at least one service, or combinations thereof ... of at least a

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portion of the complex project; ...; sending an electronic notification ... to at least one buyer and at least one seller; receiving a proposed ... at least the one buyer or the at least one seller; receiving a proposed ... at least from the other buyer or at least from the other seller.”. Appropriate correction is required. Claims 131-134 and 137 have a similar issue.

Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 4 recites “at least one parameter defining at least one aspect of the complex project”. There is nothing in independent claim 1 reciting anything about a parameter. There is technically not any connection to claim 1 without the presence of a parameter. Furthermore, there is nothing relating to a parameter in the other claims which depend from claims 1. Claim 4 appears to belong more to claims 137-140 than to claims 1-3 and 131-136.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 131, 132, 137 and 138 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “medium” which is vague and indefinite. It cannot be determined whether Applicants’ mean a computer readable medium or a storage medium or some other type of medium. Claims 131 and 132 have a similar issue.

Claim 137 is a system claim which is not in agreement with method claim 1. Claim 1 does not contain any recitations in the claim limitations such as “at least one parameter of the complex project or receiving at least one parameter of the complex project or converting the at least one parameter of the complex project to estimated data or receiving actual performance data relating to the at least one parameter of the complex project”.

Claim 138 recites “the system of claim 137, further comprising at least one rule ..., wherein the at least one rule comprises a tolerance for the discrepancy between the identify a discrepancy between the actual performance data and estimated data, ...”. It is unclear as to what Applicants’ mean by “ for the discrepancy between the identify a discrepancy between the actual performance data and estimated data, ...”. Do Applicants’ mean “for the identified discrepancy between the actual performance data and the estimated data, ...”? This claim limitation is very unclear as written.

“An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...”. *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Applicants’ are also respectfully requested to check for antecedent basis in the claims.

For example claim 131 recited " of the at least one rule, and wherein the step of receiving approval or disapproval of proposed reconciliation comprises receiving automatic approval of the proposed reconciliation". It appears that "a" should be after "disapproval of" and before "proposed".

Allowable Subject Matter

Claims 1-4 and 131-136 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: comparing the actual performance data to the estimated data to determine a discrepancy between the actual performance data and the estimated data.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Note: Claims 137-140 have been excluded from the allowable subject matter because claims 137-140 need to more closely mirror method claims 1-4 and 131-136 or result in a restriction. It is suggested that the Applicants' incorporate some of the claim limitations from claim 137 regarding "parameter" into claim 1 and some of the claim limitations from claim 1 regarding "the at least one buyer and the at least one seller" into claim 137 or cancel claims 137-140 and file them along with claims 141-145 in another application..

In addition the withdrawn claims 141-145 need to be cancelled in order for the application to be allowed.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on a Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Trammell James can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3694

June 21, 2010